

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.08.2006

Coram:

The Honourable Mr. Justice V. DHANAPALAN

W.P. No.11557 of 2006,
W.P.M.P. Nos.13159, 13160, 13161 & 13162 of 2006
and
W.V.M.P. No.1054 of 2006

1. M/s. Coimbatore Stock Exchange Limited
represented by its Director Ashok Lunia
Stock Exchange Building
683-686, Trichy Road
Coimbatore - 641 035
 2. S. Anantharaman
74-75, 30 Feet Road
Krishnasamy Nagar
Ramanathapuram
Coimbatore - 641 045
- ... Petitioners

Vs.

Securities & Exchange Board of India
Mittal Court "B" Wing, I Floor
224, Nariman Point
Mumbai - 400 021

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified Mandamus as stated therein.

For 1st petitioner Mr. Arvind P. Datar, Senior Counsel
assisted by Mr. Rahul Balaji
for M/s. Satish Parasaran

For respondent Mr. V. T. Gopalan,
Additional Solicitor General of India
assisted by Mr. Shivakumar

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O R D E R

By consent of the learned Senior Counsel on either side, the writ petition itself is taken up for final disposal.

2. This writ petition has been filed seeking issuance of a writ of certiorarified mandamus calling for the records of the respondent as comprised in order No.WTM/GA/MRD/DSA/58/06 dated

17.04.2006 and quash the same as being wholly arbitrary, illegal and ultra vires the provisions of the Securities Contract (Regulation) Act and Securities and Exchange Board of India Act and consequently, direct the respondent to forthwith act in pursuance of the communication dated 15.02.2006 issued by the first petitioner and record the de-recognition as sought for.

3. The first petitioner, viz., Coimbatore Stock Exchange Limited ("CSX") has filed the writ petition along with the second petitioner who is its shareholder/member, challenging the show cause notice dated 17.04.2006 issued by the respondent.

4. The case of the first petitioner, in nutshell, is as follows:

- It was established on 09.07.1991 as a public limited company under the provisions of the Companies Act, 1956. It was granted recognition as a Stock Exchange under Section 4 of the Securities Contracts Regulation Act, 1956 ("the SCRA") on 18.09.1991 for a period of three years and the recognition is being renewed on application by CSX annually under Rule 7 of the Securities Contracts Regulation Rules, 1957 ("the Rules"). CSX initially proposed to operate as a Stock Exchange in view of the then felt necessity for a Regional Stock Exchange in Coimbatore since it was a city where a Regional Stock Exchange would benefit various companies that required listing at the Stock Exchange as well as the investor public. However, subsequent thereto, there has been a sea change in the manner in which Stock Exchanges operate. In India, there were initially two broad Groups of Stock Exchanges with 20 Stock Exchanges being set up as Companies and 3 Stock Exchanges functioning as Association of Persons.
- By efflux of time, the manner and conduct of business resulted in a situation where Regional Stock Exchanges started playing a continually diminishing role in the trading of securities. Then, the substantial impact of technology and the developments in computerisation resulted in significant changes to the manner in which the market activities took place and in the wake of globalisation and coming into force of the Securities & Exchange Board of India Act, 1992 ("the SEBI Act"), also resulted in various changes in the regulatory mechanism. There were committees constituted to consider the urgent need for corporatisation and demutualisation of Stock Exchanges for better professionalism in the running of Stock Exchanges and some recommendations were also made to the Government in this regard. A Committee headed Justice H.M. Kania

had made recommendations requiring them to operate as corporate entities and demutualisation was required in order to separate ownership and trading rights. Also, it found the difficulties that were faced by the Regional Stock Exchanges whose business had declined significantly as investors preferred to trade in the BSE and NSE which had opened franchisees in every nook and corner of the country, offering deeper markets and further, with the fall in trading volumes in the Regional Stock Exchanges, (RSEs) the listed companies felt that there was hardly any purpose in remaining listed in the RSEs and with the coming to end of the manual trading system and terminal based trading being introduced, there was further reduction in the business volumes of Regional Stock Exchanges.

- Consequent to the recommendations of Justice Kania Committee on corporatisation and de-mutualisation of Stock Exchanges in India, certain amendments were carried out to the SCRA and SEBI Act, principally mandating certain structural changes. In earlier point of time, the CSX in view of the then existing opinion of the members, thought that they would be in a position to take advantage of having a Stock Exchange in Coimbatore and moved forward in this regard by making necessary applications seeking for continuation of recognition as well as for the demutualisation that was statutorily mandated. But the process which began in the year 2004 has till date not been completed because even by 1999, there was nil trading activity in CSX and by 2004-2005, on a review of the trading patterns of the other RSEs and the reach and popularity of the NSE and BSE, it became apparent by 2004 that, having a Stock Exchange in Coimbatore would serve no purpose and all the efforts of the members would be in vain, since many of the members themselves had already expressed the view and had stopped paying their fees. In addition thereto, in view of the coming to end of trading activities ever since 1999, even companies refused to get themselves listed before CSX and hence, it was felt that it would be in the best interest of everybody concerned since the investing and trading public did not require a RSE in Coimbatore and members of CSX were also not interested in pursuing further with the recognition to operate as a Stock Exchange and they wanted to find out some alternatives.

- In the beginning, CSX was established by receiving huge contributions from members and these funds had been utilised principally for creating infrastructure, including purchase of land and building for starting a Stock Exchange and provision of office space to all members as also heavy investment that went into the setting up of the trading mechanism, computerisation terminals, recruitment of staff, etc. and in fact, CSX had started leasing out its properties even from 1997 and by 2001, substantial property of CSX building had been leased out since it had become apparent that space was not required for the Stock Exchange and ultimately, the members felt that they would not be proceeding further with obtaining recognition. Also, the building which was originally constructed to provide office space for all the members could not be utilised as it had to be let out in order to obtain rental income to re-pay bank loans which had been obtained for putting up the said building.
- Further, while the application of CSX for demutualisation was pending, there were several other correspondence and meetings with the respondent's officials. However, the respondent has neither approved the scheme of corporatisation and demutualisation nor rejected the same and instead of proceeding further in that regard, had issued a show cause notice in exercise of its powers under Section 11 of the SEBI Act as to show cause as to why the Governing Body of CSX ought not to be superseded. The said show cause notice dated 22.11.2005 was issued subsequent to which a reply dated 06.12.2005 had also been given.
- Thereafter, in view of the requisition of several members, there was an open talk about not seeking recognition and getting CSX de-recognised as a Stock Exchange since factually no trading activities were being carried on and even if recognition was renewed, it would have been impossible to commence business and to carry on trading activities and further both traders and investing public did not require a Stock Exchange in Coimbatore in view of the terminal based trading on NSE and BSE which is presently being done throughout the country. This development led to a requisition by 19 members calling for an Extraordinary General Meeting under Section 169 of the Companies Act, wherein the important resolutions that were proposed were, (a) to surrender the recognition granted to CSX which was valid till 16.09.2006 and (b) to carry out such other

necessary changes and formalities in order to convert the activities of CSX from that of a Stock Exchange which was its original object to other objects that are permissible under law. Consequent thereto, the EGM of the members of CSX was convened on 15.02.2006 and on the said date, resolutions as proposed, were unanimously passed and it was resolved to surrender the recognition and also to the effect that CSX would cease to function with immediate effect as a recognised Stock Exchange. Consequently, the new Articles of Association were also adopted at another EGM held on 31.03.2006 whereby, only members of the Exchange could hold position of a Director and the same was also duly communicated to SEBI, by a letter dated 08.04.2006.

- Thus, CSX had resolved to surrender its recognition and not to seek its further renewal as there is absolutely no negative impact on the interests of the investors or the securities market in view of the absence of any trading in it. However, to the shock and surprise of the CSX, instead of taking further steps consequent upon communication for surrendering or recognition, the respondent, by the impugned order dated 17.04.2006, purportedly under powers granted under Section 12A of the SCRA read with Sections 11, 11B and 19 of the SEBI Act, issued certain directions against the rights of CSX without as much as holding an enquiry that is required to be done under the provisions of the SCRA.

5. According to CSX, the main grounds of challenge to the respondent's impugned order are as follows:

- a. the impugned order dated 17.04.2006 is wholly arbitrary, illegal and ultra vires the provisions of the SCRA and SEBI Act and also violative of fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India;
- b. the order of the respondent is wholly without jurisdiction as CSX has surrendered its recognition on very detailed and valid grounds that form part of the requisition for the EGM and such resolutions, having been validly passed under the provisions of the Companies Act, 1956, the respondent ought not to have passed the impugned order interfering with the effecting of such resolutions tantamounting to forcing CSX to operate as a Stock Exchange and even assuming that a power under Section 12A of the SCRA can be exercised, the same can be done only after holding an enquiry and evidently, no enquiry or show cause notice itself was issued before passing the impugned order;

- c. the powers to be exercised under Section 12A of the SCRA have to be exercised only after satisfaction that directions are to be issued in the interest of investors or the orderly development of securities market;
- d. the respondent cannot force CSX and its members to obtain recognition and carry on business as a Stock Exchange and the right to commence and carry on the function of a securities exchange is one that is available to such corporate entities as may desire to do so and the grant of recognition and renewal is strictly governed by the SCRA and SEBI Act;
- e. the respondent can, under the powers granted to it by various Acts, only regulate the grant of recognition and functioning of security exchange and there is no power under any statute that would permit the respondent to interfere with a step towards de-recognition;
- f. inasmuch as the legal resolutions had been adopted by the CSX, it ceases to operate as a Stock Exchange and the respondent would have no jurisdiction on CSX except to issue consequent directions upon the intimation seeking for de-recognition;
- g. the impugned order is to be set aside inasmuch as it is a colourable exercise of power where the respondent has waxed eloquent on several aspects but has however failed to address the principal grounds on which such power could be exercised and the respondent has also failed to consider that CSX has not been carrying on trading activities from 1999 as a RSE since it has found it impossible to carry on any activities and that the investors have sufficient avenues through the trading terminals of NSE and BSE available throughout the country;
- h. the impugned action of the respondent is clearly an abuse of power inasmuch as by issuance of the impugned directions, the respondent is seeking to exercise powers that are not available to it. The impugned order can be passed only under Section 11 of the SEBI Act since it is effectively supersession of the governing body of a recognised Stock Exchange and is not in the nature of directions, as contemplated under Section 12A of the SCRA inasmuch as not granting a hearing;

- i. there is no ground for urgency to pass an ex-parte order and if even if such power is available, no grounds have been set out and even a show cause notice procedure as mandated has been dispensed with;
- j. the impugned order is liable to be set aside since even if Section 12A of SCRA is available to the respondent in the facts and circumstances of the case, it could only be to issue directions to a Stock Exchange or the person referred to in Clause 12A(B) and Section 12A does not, in any manner, grant rights to the respondent for issuing the impugned directions and
- k. none of the grounds required to be complied with for exercise of power under Section 12A have arisen in the case on hand and hence, the impugned order is wholly without jurisdiction and as per Section 12A of SCRA, directions could be issued only where trading activities are carried on and in the absence of any trading activities by CSX, the impugned action could not at all have been initiated.

6. On the other hand, the respondent has filed its counter stating that the writ petition is not maintainable and has to be dismissed in limine since the Director of the CSX has failed to enclose any valid resolution authorising him to file the writ petition and authority from the second petitioner authorising him to file the writ petition on his behalf.

7. The case of the respondent, in nutshell, is as detailed below:

- a. It is a statutory authority created under the SEBI Act for the purpose of protection of interest of investors in securities and for the development and to regulate the securities market and for matters connected therewith and incidental thereto. It also regulates the Stock Exchanges through the provisions of the SCRA and the Rules, SEBI Act, Government of India directives and circulars/directives issued by SEBI from time to time. The object of establishment of SEBI was to promote orderly and healthy growth of the securities market and to protect the investors. The respondent also obtains periodical reports from the Stock Exchanges and carries out regular inspections.
- b. A Stock Exchange, under the SCRA, is defined in Section 2 (f) as:

- i any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under Section 4A and 4B or
 - ii a body corporate incorporated under the Companies Act, 1956 whether under a scheme of corporatisation and demutualisation or otherwise for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.
- c. Further, under Section 3 of the SCRA, any Stock Exchange desirous of being recognised has to make an application in the prescribed manner to the Central Government and Section 4 of the SCRA deals with grant of recognition to Stock Exchanges. This power had been delegated to the respondent in exercise of the powers conferred under Section 29A of the SCRA vide notification dated 13.09.1994 and almost all the powers of the Central Government have been delegated to SEBI from time to time as SEBI was considered to be an expert body to deal with and regulate the securities market as a whole, including the Stock Exchanges.
- d. CSX is a Company incorporated under the provisions of the Companies Act, 1956 as a joint stock company limited by guarantee and as per the original Memorandum of Association, the main object is as follows:
- "To apply for and obtain from the Government of India recognition of the Exchange as a recognised Stock Exchange within the meaning of the SCRA and to facilitate, assist, regulate and control the trade and businesses in all kinds of securities with a view to safeguard and further the interest of brokers, jobbers, dealers and the investing public."
- e. A Stock Exchange performs economic function and is the barometer of the national economy and plays a vital role in the nation's economic development. The Stock Exchange is also a place where savings of the public are normally channeled towards productive purposes. Stock Exchange grants listing approval to the various companies which intend to get their shares listed. Stock Exchange monitors the Corporate Governance Norms of the various listed companies through the listing agreement and through the Arbitration Mechanism, Stock Exchange resolves investor grievances. Any recognised Stock Exchange may, subject to prior approval of SEBI, make bye-laws for the regulation and control of contracts.

8. The respondent's answers to certain averments of CSX are as follows:

- a. The entire writ petition is only concerned with the narrow commercial interests and the entire objective appears to be to appropriate the huge assets of CSX running into several crores of rupees thereby, acting contrary to public interest, contrary to the purpose for which CSX was created as a Stock Exchange and conferred with the public duty and contrary to the interest of large number of investing public of the said region.
- b. The impugned directions would not in any manner impact the rights of CSX and they have not been passed without holding an enquiry. Members of CSX have no fundamental right to surrender the recognition, by passing a resolution to this effect in its EGM and that respondent has every jurisdiction, power and authority to pass the impugned order on the ground that CSX has ceased to be a Stock Exchange.
- c. While it is a fact that CSX was established as a Public Limited Company on 09.09.1991, it has suppressed the fact that it is a company limited by guarantee and there has been no contribution towards Share Capital. CSX has also not adverted to the fact that when it was originally incorporated, there were specific clauses under the Memorandum and Articles of Associations that in the event of any winding up, merger, or amalgamation of the Company, the surplus assets would not be distributed among the members. Though it may be true that 20 Stock Exchanges have been set up as Companies, the petitioner has failed to advert to the fact that 8 of these Stock Exchanges are companies limited by guarantee. Further, the resolution passed in the EGM dated 15.02.2006 is invalid and is contrary to the provisions of the SCRA inasmuch as SCRA does not envisage surrender of recognition which was communicated to the Stock Exchange by SEBI vide letter dated 17.03.2006. In such a situation, the members of the Stock Exchange rushed to pass the resolution in question just to avoid the disciplinary action which was contemplated by SEBI vide show cause notice dated 22.11.2005. Further, it can be seen from the words of the resolution wherein instead of mentioning that the recognition may be surrendered, the words "the recognition stands surrendered and the Stock Exchange ceases to function as a recognised Stock Exchange" have been used. Further, in the EGM held on 31.03.2006, CSX had passed a resolution to amend its

Memorandum and Articles of Association ousting Public Representative Directors/SEBI Nominee Director from its Council of Management and thereby perpetuated the illegality in its resolutions dated 15.02.2006.

- d. After the submission of corporatisation and demutualisation scheme by CSX, SEBI officials had a meeting with the CSX officials and suggested to carry out certain changes taking care of the financial implications to the Exchange and submit the revised scheme for its approval which has not been done CSX. Therefore, the process of corporatisation and demutualisation which began in 2004 could not be completed as SEBI is yet to receive the revised scheme from the Exchange and in fact, the issue is pending before CSX for re-submission of the scheme. The elected Directors/Members have unilaterally decided to surrender the recognition on behalf of investors without following the due process of law assuming that the surrender would be in the best interest of everybody concerned. SEBI, being the regulator of the securities market, has received complaints from investor bodies such as Coimbatore Shareholders & Investors Association, a registered body, being a representation signed by over 60 individuals and also from the Indian Chamber of Commerce and Industry, Coimbatore.
- e. The contention of CSX that there is lack of interest by investors and trading public cannot be sustained since over 170 companies have been listed with CSX out of which five companies are exclusively listed with CSX. CSX has been receiving Listing Fees periodically from the Companies listed therein by which a sum over and above Rs.2 crores has been collected. Members cannot take unilateral decision of voluntarily surrendering the recognition abruptly since this action would have serious implications on the investing public, listed companies as well as the securities market in general. As per the renewal application dated 16.06.2005, CSX had stated that its active members are trading in NSE segment through ISE Securities and Service Ltd. which is a subsidiary of Interconnected Stock Exchange of India Ltd. (ISEI). These members are trading to the average extent of Rs.20 crores (approx.) per day, using the infrastructure available at present with CSX and ISEIU is incorporated as a separate company to provide a common trading platform to members of all participating Stock Exchanges including CSX, mainly with the objective of boosting trading in the securities listed on the participating Stock Exchanges. The interconnectivity of Stock Exchanges was meant to facilitate the members of various

Stock Exchanges to deal through an interconnected market system, which was provided by ISEI and therefore, it is clear that the existing infrastructure facilities of CSX are productively used. Further, in the Coimbatore region, trading through BSE and NSE terminals was to the extent of Rs.20 crores (approx.) in the year 2004-2005. Needless to say that in view of buoyant share markets, the trading has further increased and hence, the contention of CSX that it is not interested in trading is totally contrary to facts.

- f. Being recognised as a Stock Exchange and having enjoyed the total exemption of tax on its income which is not available to other public limited companies and having obtained the recognition to perform the public function of Stock Exchange, CSX is different from any other public limited company and cannot abruptly stop its public functions leaving the listed companies and investors of that region in lurch and therefore, has to comply with the provisions of the Companies Act.
- g. After receipt of the reply dated 06.12.2005 from CSX requesting for a personal hearing, the respondent had issued a letter dated 13.02.2006 scheduling a personal hearing on 09.03.2006 at the former's premises. However, obviously with ulterior motives, on 15.02.2006, CSX had hurriedly convened an EGM to pass a resolution regarding surrender of the recognition granted to it and that it would cease to function with immediate effect as a recognised Stock Exchange within the scope and meaning of the SCRA and SEBI Act and thereafter, on 04.03.2006, CSX forwarded the copy of the minutes of the EGM dated 15.02.2006 and on 09.03.2006, a personal hearing was given to the entire Council of Management of CSX. On 17.03.2006, the respondent had replied to the letter dated 04.03.2006 of CSX confirming that voluntary surrender of recognition was not provided and not permissible and further clearly mentioning that the resolutions would be ultra vires the SCRA and cannot be acted upon by CSX. Despite this letter, CSX had called for another EGM on 31.03.2006 wherein various clauses of the Memorandum and Articles of Associations of CSX were amended, contrary to Section 4(5) of SCRA and the established practice. Hence, in exercise of powers conferred under Section 12-A of the SCRA read with Sections 11, 11B and 19 of the SEBI Act, certain interim measures were taken and the order in challenge has been passed

- h. The resolution passed by CSX on 15.02.2006 surrendering recognition is invalid under the law and it is also incorrect to state that the same had been communicated to the respondent by its letter dated 08.04.2006 as no such letter was received by SEBI.
- i. Its order is a valid one to safeguard the interest of the securities market invoking powers under Section 12A of the SCRA and it also given an opportunity to CSX to show cause within 15 days from the date of the order as to why any further direction including direction for superseding the Council of Management of CSX may not be passed in the interest of its smooth functioning and the Council of Management of CSX also, if so desired, may request for a personal hearing after replying to the charges alleged in the impugned order and therefore, the impugned order is only a show cause notice with certain preventive direction in the given emergent situation.
- j. According to the respondent, there is no provision for voluntary surrender because the role of a Stock Exchange is complex and involves various members, market participants, investors, companies, etc. and is also interlinked with the other Exchanges, national economy and global participation and therefore, the contention of CSX that being a company, it is its prerogative to wind up the Company and surrender the recognition at its will and pleasure cannot be sustained.
- k. The respondent has got every power and authority to question CSX, (ii) to appoint any Committee to take over the day-to-day functioning of the Exchange even in emergent situation and (iii) to pass orders without holding any enquiry and CSX, instead of rushing to this Court, should have replied to the charges enabling SEBI to pass final order.
- l. The impugned order dated 17.04.2006 has been passed only to ensure that the business of CSX be conducted in a proper manner and in accordance with law. It is only the members such as the second petitioner who are interested in stripping the assets of CSX by changing the basic structure of the Memorandum of Association of CSX, changing the authorised signatory of the bank accounts and changing the personnel of CSX with the singular interest of disposing of the huge assets of CSX and it also appears that the second petitioner and other members are interested in doing real estate business instead of concentrating on the business as a Stock Exchange.

- m. The respondent had originally issued a show cause notice on 22.11.2005 for which CSX had sought for personal hearing and even before the personal hearing could be conducted, the second petitioner and other members had sought to amend the Articles and sought for voluntary surrender and passed the resolution illegally making the recognition as surrendered. It is therefore clear that the entire exercise by the second petitioner and other members has been only to sabotage the efforts of the respondent pursuant to the show cause notice dated 22.11.2005.
- n. CSX cannot be equated with other Companies especially so since CSX has more than 170 companies listed with it and many members presently trade through ISEI and more so since the recognition is valid till September 2006. Further, no Stock Exchange can abruptly surrender its recognition and such an act can be done only under the supervision of the respondent since it is a Board which is statutorily bound to protect the interest of the investors in securities and to promote the development of and to regulate the securities market. If the contention of the petitioners are to be accepted, then it would mean that any Stock Exchange would have the powers to voluntarily surrender its recognition. Assuming the NSE or the BSE were to adopt such an approach, it would lead to total financial anarchy with catastrophic results for the Indian economy, in specific, and the global economy in general and in such a view of the matter, the Stock Exchanges cannot be treated as a mere company with total independence for the members to deal as they like and Stock Exchanges are conferred with certain specific privileges and concessions which are not available to other companies and therefore, CSX is not right in contending that its fundamental right under Article 19(1) g is violated.
- o. On the contention of the petitioners that the impugned order has been passed without holding an enquiry, the respondent has contended that it has been passed in exercise of powers under Section 12A of the SCRA read with Sections 11, 11B and 19 of the SEBI Act in order to prevent the affairs of CSX being conducted in any manner detrimental to the interest of the investors and to secure proper management of the Exchange. Further, even in the Statement of Objects and Reasons appended to the Bill by which the Ordinance was promulgated, it has been clearly mentioned "investor confidence in the capital market can be sustained largely by investor protection. With this end in view, the Government decided to vest SEBI immediate with the statutory powers required to deal effectively with all matters relating to capital market."

- p. Further, Section 11 of the SEBI Act deals with the functions of the Board. This Section, under 11(2)(a) gives power to SEBI to regulate the business of the Stock Exchanges and any other securities market. 11B of the SEBI Act deals with the powers to issue directions, in the interest of investors for orderly development of securities market and to secure proper management and a plain reading of the above Section itself shows that the respondent has to protect the interest of the investors in securities and to regulate the Stock Exchanges and securities market by such measures as it thinks fit. As such, SEBI has the statutory duty and authority to pass interim orders, pending enquiry and these powers do not mandate a pre-decisional hearing by the very nature of the situation and circumstances in which it is required to be invoked and the interim measure is only to prevent further possible mischief of tampering with the affairs of the Stock Exchange and securities market in order to ensure protection, orderly and health growth of securities market so as to make the respondent's control over the capital market effective and meaningful. Since exigencies and requirements may arise while regulating Stock Exchanges, it has been entrusted with the duty and function to take such measures as it thinks fit and this enabling provision has been enacted to empower the respondent to regulate stock markets and securities markets, in order to protect the interests of the investors and to sub-serve the purpose for which it has been enacted.
- q. The power to issue directions by the respondent are of the widest possible amplitude and are exercisable in the interest of the investors to prevent any conduct of the Stock Exchanges in any manner detrimental to the interests of investors of the securities market. Therefore, the respondent, as a regulator of securities market, is empowered to take all necessary measures to protect the interests of the investors, Stock Exchanges and capital market and hence, is fully competent and empowered by various provisions of SCRA and SEBI Act to pass interim order in aid of final orders and in this view of the matter, pre-decisional hearing would not be necessary in emergent situations like the present one when the Act contemplates a post-decisional hearing amounting to a full review of the original order of merit, and hence it would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Also, the respondent has to act, as a regulatory agency, especially when the operation of stock market and its functioning are highly technical and complex and thus, there is no violation of principles of natural justice.

- r. That apart, the order under challenge has also to be seen in the backdrop of the conduct of the second petitioner and other elected members of the Exchange who are hurriedly trying to strip all the assets of CSX running into crores of rupees by converting the Stock Exchange into a real estate company without considering the consequence of their act, the impact on the economy, investing public, listed companies, etc. Pending operation of the order, the Committee set up for the day-to-day functioning of the Exchange by SEBI consisting Public Representative Directors/SEBI Nominee Director who are independent and have no personal stakes in the Exchange would seriously jeopardize the functioning the Exchange and if the elected members are not stopped from acting in accordance with the invalid resolutions dated 15.02.2006 and 31.03.2006, the situation would be irreversible. Also, any interference with the functioning of the independent committee which is set up for the protection of the Stock Exchange mechanism would set a wrong precedent inducing other intermediaries also to defy an order of the regulator and would encourage wrongdoings at the market place. Therefore, CSX can very well participate in the show cause enquiry and subject itself to SEBI's jurisdiction, in which event, the interest of all concerned could have been adequately safeguarded.
- s. Though it is true that power has to be exercised by the respondent only after satisfaction that the directions are being issued in the interest of the investors and orderly development of the securities market, prima facie, the impugned order would make it clear that the action by the respondent has been consistent with the statutory powers. The contention of CSX that some of the RSEs would have to be closed down as per Justice Kania Committee Report cannot be held good since the recommendations of the Justice Kania Committee Report were accepted by SEBI, which, in turn, has issued a circular addressed to all the Stock Exchanges to submit their corporatisation and demutualization scheme. However, the recommendations of the Committee have not been transformed into an Act since the Bill introduced in the Lok Sabha could not be passed as the then Lok Sabha was dissolved. In respect of demutualization process, certain information were being awaited from CSX and this being the position, without completing the process, CSX is seeking to convert itself into a real estate company with a view to strip its assets and siphon off the immovable properties.

- t. There are various penal provisions including Section 23G of the SCRA which provide for penalty upto Rs.25 crores and therefore, it is clear that the game plan of the petitioner members have been exposed and the whole objective is only to scuttle the process of show cause. Further, the show cause notice was only to show cause as to why action should not be taken against the Council of Management of CSX under the relevant provisions of the Act and there is no colourable exercise of power and it is not correct in contending that no trading activities are being carried out by the members of CSX since 1999 as the annual turnover of the members of CSX has recorded between Rs.5,000 to Rs.6,000 crores and further, in the Coimbatore region, trading through BSE and NSE terminals was to the extent of Rs.20 crores in 2004-2005. Hence, any decision to abruptly surrender the recognition would have serious repercussion and therefore, the action taken by the respondent has been consistent with the statutory provisions of the SCRA and SEBI Act.
- u. SEBI as a regulator of the securities market, the Courts have upheld the power of the respondent to issue interim directions without personal hearing in emergent situations
- v. Further, there is no prima facie case or balance of convenience in favour of the petitioners for grant of any interim relief and there is no arbitrary exercise of power by the respondent and the petitioners are only trying to scuttle the show cause notice and to avoid penal consequences under Section 23G of the SCRA and other provisions and therefore, in the interest of investing public, listed companies and securities market among others, the writ petitioners are not entitled to any relief and as such the writ petition has to be dismissed.

9. Mr. Arvind P. Datar, learned Senior Counsel appearing for the petitioners has contended that the impugned order, passed in purported exercise of powers under Section 12A of the SCRA and 11, 11B and 19 of the SEBI Act, (i) restraining the petitioner from taking any action pursuant to its resolutions at its EGM and from transferring or alienating any property of the Exchange (ii) directing the day-to-day functioning of the Exchange to be taken over by a three member Committee and (iii) authorizing the said Committee to make expenditures in respect of the petitioner is unsustainable and only an arbitrary exercise of power.

10. According to Mr. Datar, the impugned order is a result of the intimation to the respondent that the petitioner, in view of the unviability of carrying on a Regional Stock Exchange has been recognized in two high powered Committee reports namely, the Report of the Group on Corporatisation and Demutualisation of Stock Exchanges headed by former Chief Justice M.H. Kania, 2002 (Kania Committee Report) and the Report of the Committee to study the future of the Regional Stock Exchanges, 2006 headed by Mr. Anantharaman (Anantharaman Committee Report). From the Anantharaman Committee Report, it can be seen that there is "zero" turnover in respect of CSX since 1999 which specifically observes that the respondent has not formulated clear guidelines for exit route for stock exchanges but which endorses the steps taken by CSX and particularly, the Committee has been headed by the very same person who has passed the impugned order.

11. Mr. Datar has further contended that CSX is a guarantee company under the Companies Act, 1956 and it has acted strictly in terms of the Companies Act amending its Memorandum of Association and since 1999, no trading activities have been carried on and its application for corporatisation and demutualization submitted in July 2005 has not been accepted till 31.03.2006, thereby leading to its being impossible to carry on business as a Stock Exchange.

12. It is also the strenuous contention of the learned Senior Counsel that CSX has exhibited its bonafide as evident in its letter dated 04.03.2006 wherein it has requested the respondent consequent upon its communication to be de-recognised to pass consequential orders and the respondent, rather than passing orders thereto, has sought to take an arbitrary step by issuing the impugned order through its whole time member rather than by itself and therefore, the impugned order has to be set aside.

13. According to Mr. Arvind Datar, learned Senior Counsel, the important grounds of challenge are that:

- a. when a statute provides that an act is to be done in that manner, it has to be done in that manner or not at all.
- b. there is no prohibition under the SCRA against the surrender of recognition.
- c. in addition to the right available to the petitioner to surrender its recognition, by virtue of the operation of law, the petitioner has, in any event, become de-

recognised as a Stock Exchange and the respondent has no power to act contrary thereto.

- d. the impugned order is in lack of jurisdiction wholly.
- e. The action of the respondent in issuing the impugned order is a colourable exercise of power.
- f. The impugned order seeks to pass orders without giving a hearing on the ground of an imminent danger.

14. To substantiate the above grounds, Mr. Datar has vehemently contended that:

- a. it is a settled proposition of law that when an Act requires that a particular action or thing is to be done in that manner, it has to be done in that manner or not at all, particularly when serious consequences ensue and in the present case, the respondent has passed the impugned order in total violation of several provisions of SCRA and SEBI Act.
- b. The carrying on of a Stock Exchange business is a purely voluntary exercise by making appropriate applications and getting recognized as a Stock Exchange under the provisions of SCRA, and SEBI Act regulates the conditions to be satisfied and the right to carry on business includes the right not to carry on business and the same is a well recognized principle of law. Granting recognition is provided under Section 4 of the SCRA and there is no provision against getting de-recognised under the Act and in fact, under Rule 7 of the Rules, it is for the Stock Exchange to apply for renewal if it desires to do so. The recognition itself, under Rule 6, unless it is granted on a permanent basis, is for a period of one year to be renewed from time to time and unless there is an express prohibition under a specific enactment, it cannot be read into a statute and prohibitions cannot be presumed.
- c. By introduction of Sections 4A, 4B and substitution of Section 5 based on Justice Kania Committee's Report, all Stock Exchanges including RSEs like CSX were required to submit their scheme of Corporatisation and Demutualisation which CSX has done and consequent upon several discussions with the respondent's officials, submitted its final scheme in July 2005 and the respondent, instead of passing orders on it, has proceeded to pass the impugned order. The notified date for completing the process in terms of Press Note

9 of 2005 was 31.03.2006 and CSX not having been corporatised or demutualised by virtue of Section 5(2), its recognition stands automatically withdrawn by the Central Government and thus, it is therefore not for the respondent to pass any orders contrary thereto.

- d. the actions that can be initiated against the Stock Exchanges are governed by the provisions of SCRA and when there is non-compliance of mandatory provisions and a rather peculiar argument is sought to be advanced by the respondent that even where a mandatory hearing is provided for, the same can be dispensed with. The order passed by the whole time member purportedly under Section 12A of the SCRA and a reading of the said Section makes it clear that no order can be passed without holding an enquiry since the statute mandatorily requires that a pre-decisional hearing be given and such a provision cannot be given a go by.
- e. the impugned order, though claimed to be a "show cause notice", is not a show cause notice for the reasons that it is expressly termed as an "order" and the respondent has specifically issued orders which are impermissible under the provisions of Sections 12A of SCRA itself since none of the conditions therein is satisfied. Clause 12A(b) is inapplicable since by operation of Section 5(2) of the SCRA, the recognition stands withdrawn and CSX cannot be said to be a recognized Stock Exchange. Furthermore, such directions under Clause (c) can be issued only in the interest of investor and securities market and in the absence of any trading activities, there cannot be either an investor or a security market.
- f. The power though sought to be having exercised under Section 12A of the SCRA is essentially the one that has been taken under Section 11 of SEBI Act which alone provides for supersession. In view thereof, when Section 11 provides for a hearing to be given and that an order of supersession being passed only after mandatorily giving a hearing and as such, an order under Section 11 purporting to be in the guise of a direction under Section 12A cannot be issued and it is a clear case of abuse of and colourable exercise or power.
- g. Reasons for passing an order have to be set out in the order itself and cannot be supplemented by way of affidavits. Considering the fact that the petitioner's only assets are its infrastructure or building, it is therefore but natural that its object would include a real estate business. Merely because an object is to

carry real estate business, grave and serious allegations of striping of assets cannot be made. It is CSX which is safeguarding the assets and in fact, one of the nominees of the respondent who was the Registrar of Companies is trying to strip the assets of CSX.

- h. The impugned order can be passed only on the satisfaction of SEBI whereas in the case on hand, the order has been passed not by the Board but by a single member. Unlike the SEBI Act which permits under Section 19 for the SEBI to delegate its powers and functions to any member, the SCRA, under Section 29A, specifically permits delegation only in respect of the Central Government's powers to the SEBI and there is no further power of delegation provided for and therefore, it follows that (a) the SEBI, unlike under the SEBI Act, cannot delegate its power under SCRA to any member and (b) even the Central Government's powers can be delegated only to SEBI and SEBI cannot further delegate it and in nutshell, the power of delegation cannot therefore be read to permit a further delegation other than what is provided for under the Act. Further, the delegation power under SCRA is contained in notification dated 30.07.1996 and the same does not provide for delegation of powers to any individual member. That apart, the delegation that has been done under the SCR Act cannot be utilized for the purpose of interpretation of the powers of SEBI under the SEBI Act since there has admittedly not been any delegation by the Central Government under Section 11(2)(j) of SEBI Act. Delegation under one Act cannot be used for exercising such power under another Act in the absence of a specific delegation.
- i. More importantly, while the order under the SEBI Act is appealable to the Securities Appellate Tribunal under Section 15T, to the Central Government under Section 20 and an appeal from Securities Appellate Tribunal, no appeal is provided under the SCRA against an order passed under Section 12A or 11 of the SCRA. The appeal provisions under SCRA as set out in Sections 22, 22A and 23L do not apply to the present order. Whereas under SEBI Act, the order is appealable but not so under the SCRA and if delegation of power under SEBI Act is used for exercising powers under SCRA, it would be clearly violative Article 14 since it grants to the body exercising the power the right to determine whether its order is appealable or not. Therefore, the right of appeal is a substantive right and can be conferred only by a statute and the existence of the right of appeal cannot be determined by the action of

the delegate in taking action under one Act or the other since it is a substantive right and such an interpretation would confer wholly arbitrary power on the delegate. In effect and substance, the order is one under Section 11 and claimed to be under Section 12A of SCR Act and the same could not have been exercised by the member. In the present case, the impugned order does not seek to regulate any business in a Stock Exchange but seeks to take over the Stock Exchange itself which is impermissible and in fact, no regulations in this regard have been framed under the SEBI Act.

- j. Also, Section 11(4) of SEBI Act specifically provides for the circumstances in respect of powers to pass ad-interim exparte orders which clearly do not arise in the present case. Section 11B is also inapplicable for the reason that directions under Section 11B can be issued only to a person or a class of persons referred to in Section 12 and a Stock Exchange is not one such person and as such, the impugned order cannot be sustained and
- k. lastly, the respondent seeks to rely upon the earlier show cause notice issued on 22.11.2005 while conveniently failing to state that a reply to the same in great detail was sent as early as 06.12.2005 in respect of which no order was subsequently passed and instead, the respondent has passed the present order in violation of statutory powers and seeks to perpetuate its arbitrary exercise of powers.

15. Per contra, Mr. V.T. Gopalan, learned Additional Solicitor General of India, appearing for the respondent, during the course of his exhaustive arguments has argued that the writ petition has been filed against the show cause notice dated 17.04.2006 in and by which for the reasons stated therein, certain interim directions had been made in order to prevent the affairs of CSX being conducted in the manner detrimental to the interests of the investors and also to secure proper management of the Stock Exchange. It is his case that there are two issues involved in the said show cause notice, namely, (i) whether a writ petition can be entertained against the show cause notice and (ii) whether pending adjudication of the show cause notice, certain interim directions of the nature stated in the said show cause notice be issued by the SEBI. According to him, the above two points are no longer res integra and they are covered by the judgments of both Supreme Court or High Courts against the petitioner.

16. On the first issue of whether a writ petition could be entertained against the show cause notice, learned ASG has relied on has relied on two judgments of the Supreme Court reported in (2004) 3 SCC 440 and (2006) 4 SCC 278. In his opinion, applying the principles laid down in the said judgments, there is no lack of jurisdiction in the issuance of the said show cause notice and even facts canvassed one way or the other would only relate to the limits on the exercise of power which will not warrant any interference at the threshold. It is the further argument of the ASG that such facts and questions of law arising therefrom also should be placed before the authorities issuing the show cause notice and the proceedings before the statutory functionary cannot be stifled even at the threshold by invoking the jurisdiction under Article 226.

17. The learned ASG, on the second issue as to whether the respondent has the jurisdiction to make interim directions, has argued that in view of the extra ordinary situation created by the conduct of writ petitioners, the interim directions came to be made without which CS, could not be preserved and the whole proceedings also would be rendered infructuous if the past conduct of CSX was not put on hold. When once a company had been licensed to become a Stock Exchange, after bringing forth the relevant amendments to the Articles of such Company to enable them to become a Stock Exchange cannot be reversed unilaterally by the said Stock Exchange and any amendment to the Articles of the Stock Exchange could be made only with the approval of Central Government/SEBI as per Section 4(5) read with Section 2 (g) of SCRA. In this case, CSX has removed six nominated Directors by amending the Articles and again, the Articles have been amended enabling them to carry on the business of real estate and also for surrendering their licence to run a Stock Exchange and all these things have been done deliberately in order to wriggle out of the statutory obligations under SCRA and SEBI Act. When once the company had become a Stock Exchange, it ceases to be a pure and simple limited company because of the nature of the functions of a Stock Exchange involving a great amount of public interest. It has been held that such Stock Exchanges also should be regarded as a "State" within the meaning of Article 12 of the Constitution. Once the company had become a Stock Exchange, they could be superseded by an order made under SCRA by the SEBI under the powers delegated to it and there is no question of a Stock Exchange ceasing to do its business as such by unilateral withdrawal of their license. Despite the statutory inhibitions, they have deliberately adopted the course in the shape of resolutions of 2 EGMs the substance of such resolutions militating against the object and purpose of the two enactments and posing an affront to the statutory duties and functions of SEBI. In such a situation, the interim arrangement of the nature specified in the show cause notice made by SEBI for the purpose of preserving the integrity of CSX cannot be taken exception to.

18. In support of his contention of the power to make such interim direction pending disposal of show cause notice, the learned ASG has relied on two decisions of Division Bench of the Bombay High Court reported in SCL (18) 1998 543 in the case of Ramrakh R. Bohra Vs. SEBI and SCL (32) 2001 227 in the case of Anand Rathie Vs. SEBI (discussed in the later part of this order) and has pointed out that there are no judgments contrary to the above two decisions.

19. On the question of whether supersession could be made in the guise of an interim direction, the learned ASG has contended that the expression "supersession" is a misnomer in the light of the very interim directions made in the impugned show cause notice. According to him, the term "supersession" will mean that the entire body corporate constituted had to be superseded and somebody else have to be put in place of the superseded body to manage the day-to-day affairs. It is his argument that in this case, no stranger has been appointed to look after the day-to-day business of CSX but only three of the nominated Directors who had been illegally removed by CSX but in law continued as such Directors have been placed in charge of CSX, pending adjudication of the show cause notice and if exclusion of certain Directors from the management of the Exchange could be called supersession, then, it is only the petitioners who had superseded the Stock Exchange by unilaterally removing the nominated Directors. Also, by placing the three nominated Directors to be in charge of the day-to-day affairs, the Board of Directors, in the eyes of law, before the illegal removal of the nominated Directors by the SEBI, continued to exist and they have to necessarily perform the statutory duties enjoined upon them not only by SCRA and SEBI Act but also under the provisions of the Companies Act. Therefore, there is no substance in the contention that supersession had been made by a nominated member of the SEBI without hearing the petitioner.

20. On the contention of the petitioner that a delegated power cannot be further delegated, the learned ASG has contended that the questions of delegation and further delegation are only matters of interpretation of the relevant provisions and to find out whether there has been a further delegation and if so, whether such delegation has been authorized, one has to necessarily look into the relevant statutory provisions under Section 11 of the SCRA. The power to supersede has been vested with the Central Government and such power to supersede could be validly delegated by the Central Government to the SEBI under Section 29A of SCRA. He has pointed out that under Section 11 (1), there is a generality of the functions and duties cast upon the SEBI i.e. to protect the interest of investors in securities and to promote the development of and to regulate the securities market, by such measures as it thinks fit. Under sub-section 2 of Section 11, without prejudice to such generality of power, by Section 11(2)(j), the powers delegated to SEBI under SCRA by the

Central Government also becomes part and parcel of the duties and functions of the SEBI. In the said provision, the power under Section 11 and Section 29 of SCRA have been incorporated by reference and to this extent, they became part of SEBI and when once such a delegation had taken place, it becomes a statutory function and duty of the SEBI under Section 11(2)(i) which could be validly delegated under the provisions of SEBI itself namely Section 19 to the Chairman or any of its officers. Therefore, the delegation is statutorily authorized by the Parliament in the Act itself and as such, the complaint that a delegate cannot further delegate will not apply to the facts of the case.

21. In this connection, the learned ASG has relied on a decision of the Supreme Court reported in AIR 1967 SC 295 (discussed later) in which in paragraph 71, which is only a minority view, it has been held that when the provisions of the statutory enactment did not provide for a further delegation, the same could not be done by way of statutory rules made under the said Act. But the case on hand is totally different in that the functions of the Central Government under SCRA by delegation became the function of the Board under Section 11(2)(i) and when once it became the function of the Board, the statute itself authorizes the delegation of such function of the Board under Section 19 to the Chairman or its officers.

22. The learned ASG has further pointed out that Section 11 (2)(a) of SEBI Act empowers SEBI to regulate the business of the Stock Exchanges and any other securities market and this specific power vested in SEBI enables it to pass appropriate directions to the Stock Exchanges. Exercise of such power by SEBI is further complimented by the provisions of SCRA and there is no statutory violation in respect of delegation of powers. The ASG has strongly that contended that in any case, in view of the aforesaid powers conferred upon SEBI under the SEBI Act itself, the impugned show cause notice has to be upheld and the writ petition has to be dismissed.

23. Lastly, the ASG has vehemently argued that the contention of the petitioner that it had become defunct and not doing business for several years is far from truth as the letter of the petitioner dated 21.04.2006 clearly evidenced that it is still carrying on the business of a Stock Exchange and it was only to forestall any order of supersession which might be passed against the petitioner that CSX had chosen to pass such resolutions in the EGM and have filed the present writ petition to avoid further action pursuant to the impugned show cause notice. Moreover, the attempt of the petitioners in filing the writ petition is not bona fide and the petitioners, in the circumstances, can only show cause and should they desire to have a personal hearing and establish their defence to the show cause notice, it will also be afforded to them and therefore, the writ petition is totally mis-conceived and not maintainable in law.

24. I have heedfully considered the submissions made by the learned Senior Counsel on either side. The order impugned in this writ petition is the order passed by SEBI signed by a whole time member under Section 12A of SCRA read with Sections 11, 11A and 19 of the SEBI Act, 1992. In the impugned order, it is stated as follows:

"SEBI conducted an inspection of the Exchange during August 27-30, 2003 and on the basis of the findings indicating certain deficiencies and irregularities in the functioning of the Exchange, granted conditional renewal of recognition for a period of one year commencing on the 18.09.2003 and ending on 17.09.2004 and the said conditions were as under:

...
...

25. After discussing the various issues involved in the passing of the impugned order, SEBI has issued directions in paragraphs 28 to 30 of the order which read as under:

"28. I am of the considered view that, in view of the imminent urgency and in order to safeguard the integrity of the securities market, the previous notice to show cause can be dispensed with and it will be in the interest of justice to pass an ex-parte interim order. As the irregularities that have taken place subsequent to the show cause notice dated 22.11.2005 may also call for supersession of the Council of Management of CSX, the allegation mentioned herein may also be treated as a fresh show cause notice in addition to the show cause notice dated 22.11.2005.

29. The CSX may reply to the charges alleged herein within 15 days from the date of this order showing cause as to why any further direction including direction for superseding the Council of Management of CSX may not be passed in the interest of smooth functioning of the exchange. The Council of Management of CSX may also if so desired, request for a personal hearing in the matter before passing of the final order by SEBI which may include superseding the Council of Management of CSX, in light of the irregularities mentioned in the show cause notice dated 22.11.2005 as well as the subsequent developments mentioned supra.

30. Therefore in exercise of powers conferred upon me under Section 12A of SCRA read with Sections 11, 11B and 19 of the SEBI Act, in order to prevent the affairs of CSX being conducted in a manner detrimental to the interests of the investors and also to secure proper management of the stock exchange, I hereby direct as under:

a CSX is refrained from taking any action pursuant to the resolutions passed at the Extra-Ordinary General Meetings held on February 15, 2006 and March 31, 2006 and any other decisions that might have been taken without the participation of the Public Representative Directors/SEBI Nominee Director after the EGM dated February 15, 2006 and from transferring or alienating any movable or immovable property of the exchange in any manner whatsoever, till further orders and also not to do anything which would have the effect of or which is likely to have the effect of altering the basic contours of the exchange as well as the character of the exchange.

b. Pending hearing and final decision in the matter, the day to day functioning of the exchange would be undertaken by a three member Committee consisting of Shri. V. Selvaraj, SEBI Nominee Director/ROC/who will be the Member-Chairman of the said Committee and Shri. C.A. Venkatesan and Shri. K.R. Raman, Public Representative Directors.

c. The said committee is authorized to make such expenditures and operate the bank accounts of the exchange for meeting out the day to day expenses, including salary of staff, etc. till further orders."

26. Before proceeding to consider the issues involved in this writ petition, it would be proper for this Court to deal with the relevant provisions of SEBI Act and SCRA which are as under:

Section 11 of the SEBI Act:

- (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.
- (2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for
 - (a) regulating the business in stock exchanges and any other securities markets.
 - (i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market
 - (j) performing such functions and exercising such powers under the provisions

Section 11 (B) of SEBI Act

Save as otherwise provided in Section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary-

- (i) in the interest of investors or orderly development of securities market; or
- (ii) to prevent the affairs of any intermediary or other persons referred to in Section 12 being conducted in a manner detrimental to the interest of investors or securities market;
- (iii) to secure the proper management of any such intermediary or person,

it may issue such directions -

- (a) to any person or class of persons referred to in Section 12, or associated with the securities market; or
- (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Section 19 of the SEBI Act

The Board may, by general or special order in writing, delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under Section 29) as it may deem necessary.

Section 4(5) of the SCRA

No rules of a recognised stock exchange relating to any of the matters specified in sub-section (2) of section 3 shall be amended except with the approval of the Central Government.

Section 11(4) of the SCRA

The Central Government may at any time before the determination of the period of office of any person or persons appointed under this section call upon the recognised stock exchange to re-constitute the governing body in accordance with its rules and on such reconstitution all the property of the recognised stock exchange which has vested in, or was in the possession of, the person or persons appointed under sub-section(1), shall re-vest or vest, as the case may be, in the governing body so re-constituted.

Section 12A of the SCRA

If, after making or causing to be made an enquiry, the Securities and Exchange Board of India is satisfied that it is necessary -

- a in the interest of investors or orderly development of securities market; or
- b to prevent the affairs of any recognised Stock Exchange or clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market,

it may issue such directions, -

- i to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or

class of persons associated with the securities market;
or

- ii to any company whose securities are listed or proposed to be listed in a recognised stock exchange,

as may be appropriate in the interests of investors in securities and securities market.

Section 29(A) of the SCRA

The Central Government, may, by order published in the Official Gazette, direct that the powers (except the power under Section 30) exercisable by it under any provision of this Act, shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934 (2 of 1934).

27. Having dealt with above provisions of SEBI Act and SCRA, let me now consider the various rulings of the Supreme Court and High Courts relied on by the learned counsel on either side.

28. On the side of the petitioners, reliance has been placed on the following decisions:

- a. A four Judge Bench decision of the Supreme Court reported in AIR 1976 SC 789 in the case of Hukam Chand Shyam Lal Vs. Union of India & Others: (para 18)

"It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided, will be violative of the fundamental principles of natural justice. Now, in the present case, if the telephones of the appellants were to be disconnected on the ground of misuse, then they had to give, in consonance with the principles of natural justice, opportunity to the appellants to explain their conduct before taking action under Rule 427 read with Rules 416 and 421. Resort to the wrong and more drastic course provided in Rule 422, on a ground which was not germane to an

action under that Rule, vitiates the impugned order, particularly when it is manifest that in making the impugned order, the General Manager was influenced more by this ground and less, if at all, by the existence of 'public emergency' certified by the Delhi Administration."

b. a Constitution Bench judgment of the Supreme Court in the case of *Excel Wear Vs. Union of India & Others* reported in AIR 1979 SC 25 (para 21):

"We now proceed to examine whether the restriction imposed under the impugned law is reasonable within the meaning of Article 19(6). This is undoubtedly on the footing, as held by us above, that the right to close a business is an integral part of the fundamental right to carry on business. But as no right is absolute in its scope, so is the nature of this right. It can certainly be restricted, regulated or controlled by law in the interest of the general public."

c. The Supreme Court judgment reported in (2000) 3 SCC 242 in the case of *New India Assurance Company Limited Vs. R. Srinivasan* (paras 17 and 18)

"But, that is not the end of the matter. Mahmood, J. in his dissenting judgment in the Full Bench case of *Narsingh Das Vs. Mangal Dubey* observed:

"The Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibitions cannot be presumed, and in the present case, therefore, it rests upon the defendants to show that the suit in the form in which it has been brought is prohibited by the rules of procedure applicable to the courts of justice in India."

We only intend to invoke the spirit of the principle behind the above dictum in support of our view that every court or judicial body or authority, which has a duty to decide a lis

between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the court or, for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore, the court will be well within its jurisdiction to dismiss the complaint for non-prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant."

d. Yet another decision of the Supreme Court in the case of H.L. Trehan & Others Vs. Union of India & Others reported in (1989) 1 SCC 764 (paras 12 and 13):

"It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in K.I. Shephard v. Union of India. What happened in that case was that the Hindustan Commercial Bank, the Bank of Cochin Ltd. And Lakshmi Commercial Bank, which were private banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under Section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three banks were excluded from employment and their services were not taken over by the respective transferee banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the court, observed as follows: (SCC pp448-49, para 16)

"We may now point out that the learned Single Judge for the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand, the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could not represent and their case could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood, they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular."

e. The decision of a Constitution Bench of the Supreme Court in the case of Mohinder Singh Gill & Another v. The Chief Election Commissioner, New Delhi & Others reported in AIR 1978 SC 851 (para 8)

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji (AIR 1952 SC 16) para p.18):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

f. Decision of the Supreme Court reported in 1965 SC 1486 (V52 C 246) in the case of Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary (para 3)

"No question has been raised that any of the amendments is ultra vires so the words of S.68 must be reasonably construed. It goes without saying that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication permits it. In the present case, the amendment of S.68 by inclusion of delegation of the functions of the Commissioner under Ss.105B to 105E does not indicate the intention that the judicial or quasi-judicial powers contained in Chapter VIA were expressly intended to be delegated. To the delegation as such there can be no objection. What is objected to is the provision, both in the section as well as in the order of delegation, that the exercise of the function is to be under "the Commissioner's control" and "subject to his revision". These

words are really appropriate to a delegation of administrative functions where the control may be deeper than in judicial matters. In respect of judicial or quasi-judicial functions these words cannot of course bear the meaning which they bear in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision, it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate. What those words meant was that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate could take action or the period or time during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate's duties was to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case. This is also the intention of S.68 as interpreted in the context of the several delegated powers. This is apparent from the fact that the order of the delegate amounts to an order by the Commissioner and is appealable as such. If it were not so, the appeal to the Bombay City Civil Court would be incompetent and the order could not be assailed. The order of the delegate was the order of the Commissioner and the control envisaged both in S.68 and the order of delegation was not control over the decision as such but over the administrative aspects of cases and their disposal. No allegation has been made that the Commissioner intervened in the decision of the case or improperly influenced it. In these circumstances, the order impugned in the appeal cannot be sustained."

g. one more ruling of the Supreme Court reported in (1994) 5 SCC 346 in the case of Sahni Silk Mills (P) Limited & Another Vs. Employees' State Insurance Corporation (paras 10 & 13)

"From Section 94-A, it does not appear that Parliament vested power in the Corporation to delegate its power on any officer or authority subordinate to the Corporation, and also vested power in the Corporation to empower such officer or authority, to authorize any other officer to exercise the said power under Section 85-B91). If Section 94-A had a provision enabling the Corporation not only to delegate its power to any other officer or authority subordinate to the

Corporation, but also to empower such officer or authority in its own turn to authorize any other officer to exercise that power, the resolution could have been sustained. As such, it has to be held that the part of the resolution dated 28.02.1976, which authorizes the Director General to permit any other officer to exercise the power under Section 85-B(1) of the Act is ultra vires Section 94-A."

29. On the other hand, on the side of the respondent, reliance has been placed on the following judgments:

a. Decision of the Supreme Court in the case of Special Director & Another Vs. Mohd. Ghulam Ghouse & Another reported in (2004) 3 SCC 440: (para 5)

"This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order, it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

b. a 3 Judge Bench judgment of the Supreme Court reported in (2006) 4 SCC 278 in the case of Standard Chartered Bank & Others Vs. Directorate of Enforcement & Others (para 25)

"The prayer for the issue of a writ of prohibition restraining the authorities under the Act from proceeding with the adjudication and the prosecution is essentially based on the constitutional challenge to the relevant provisions of the Act on the ground that they violate Articles 14 and 21 of the Constitution. Once we have held, as the High Court did, that the provisions are constitutional, the basis on which the writ of prohibition is sought for by the appellants disappears. It is settled by the decisions of this Court that a writ of prohibition will issue to prevent a tribunal or authority from proceeding further when the authority proceeds to act without or in excess of jurisdiction; proceeds to act in violation of the rules of natural justice, or proceeds to act under a law which is itself ultra vires or unconstitutional. Since the basis of the claim for the relief is found not to exist, the High Court rightly refused the prayer for the issue of a writ of prohibition restraining the authorities from continuing the proceedings pursuant to the notices issued. As indicated by this Court in State of U.P. Vs. Brahm Datt Sharma when a show cause notice is issued under statutory provision calling upon the person concerned to show cause, ordinarily that person must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. On the facts of this case, it cannot be said that these notices are palpably issued without authority of law. In that situation, the appellants cannot successfully challenge the refusal by the High Court of the writ of prohibition prayed for by them.

c. The decision of the Supreme Court reported in AIR 1967 SC 295 (V54 C 59) in the case of Barium Chemicals Ltd. & Another Vs. Company Law Board and Others: (paras 19,20,36&71)

"Bearing in mind the fact that the power conferred by S.237 (b) is merely administrative, it is difficult to appreciate how the allocation of business of the Board relating to the exercise of such power can be anything other than a matter

of procedure. Strictly speaking, the Chairman to whom the business of the Board is allocated does not become a delegate of the Board at all. He acts in the name of the Board and is no more than its agent. But even if he is looked upon as a delegate of the Board and, therefore, a sub-delegate vis-à-vis the Central Government, he would be as much subject to the control of the Central Government as the Board itself. For subs. (6) of S.10E provides that the Board shall, in the exercise of the powers delegated to it, be subject to the control of the Central Government and the order distributing the business was made with the permission of the Central Government. Bearing in mind that the maxim delegatus non potest delegare sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by an express provision or by necessary implication. Where, as here, what is sub-delegated is an administrative power and control over its exercise is restrained by the nominee of Parliament, that is, here the Central Government, the power to make a delegation may be inferred. We are, therefore, of the view that the order made by the Chairman on behalf of the Board is not invalid.

To sum up, then, our conclusions may be stated thus: The discretion conferred on the Central Government by S.237(b) to order an investigation and delegated by it to the Company Law Board is administrative, that it could be validly exercised by the Chairman of the Board by an order made in pursuance of a rule enacted by the Central Government under S.642 (1) read with S.10E (5), that the exercise of the power does not violate any fundamental right of the Company, that the opinion to be formed under S.237(b) is subjective and that if the grounds are disclosed by the Board, the Court can examine them for considering whether they are relevant. In the case before us they appear to be relevant in the context of the matter mentioned in sub-cl. (i) to (iii) of S.237(b). Though the order could be successfully challenged if it were made mala fide, it has not been shown to have been so made. The attack on the order thus fails and the appeal is dismissed with costs.

But the maxim "delegates non potest delegare" must not be pushed too far. The maxim does not embody a rule of law. It indicates a rule of construction of a statute or other instrument conferring an authority. Prima facie, a discretion conferred by a statute on any authority is intended to be exercised by that authority and by no other. But the intention may be negatived by any contrary indications in the language, scope or object of the statute. The construction that would best achieve the purpose and object of the statute should be adopted.

Lastly, the order was attacked on the ground that S.237(b) which empowers the making of such an order was violative of Articles 14 and 19(1)(g). The challenge was raised on behalf of second appellant only. The contention under the head of Article 14 was that the Act provided three different ways by which the Government can take action, under S.234 or S.235 and S.236 and lastly under S.237(b), that the power contained under S.237(b) was more drastic than under the former sections and that these sections enabled the Government to discriminate between companies and companies and pick and choose any one of them at its pleasure for action under Section 237(b). In support of this contention, reliance was placed on Suraj Mall Mohi and Co. Vs. A.V. Vishwanatha Sastri, 195 SCR 448: (AIR 1954 SC 545), where S.5 (4) of the Taxation on Income (Investigation Commission) Act, 1947 was declared discriminatory legislation and Meenakshi Mills Ltd. Vs. A.V.Vishwanatha Sastri, 1955 SCR 787: (AIR 1955 SC 13), reported in the same volume at p.787 where S.5(1) of the Act was struck down after the Income Tax (Amendment) Act XXXIII of 1964 was enacted. These decisions, however, cannot avail the petitioners for the reasons for which these provisions were struck down are lacking in the present case. No question of discrimination arises in regard to the powers under S.234 and S.237. Section 234 only empowers the Registrar to call for information or explanation and to take action where such information or explanation is not forthcoming. Under Section 234, there is no power to order investigation either in the Registrar or the Government. Under S.235, no doubt, the Government can appoint inspectors but it can do so under the three specified ensue set

out therein. What Ss.235 and 236 do is to give power to shareholders on the one hand and the Registrar through a report on the other hand to move the Government to take action. These sections do not authorize the Government to appoint inspectors suo motu as in the case of S.237(b). The discretionary power directing an investigation is contained in S.237(b). Therefore, S.234, S.235 and S.236 and S.237(b) give powers to different authorities, viz., the Registrar and the Government, provide powers which are different in extent and nature, exercisable in sets of circumstances and in a manner different from one another. Therefore, there is no question of discriminatory power having been vested in the Government under these sections to pick and choose between one company and the other. The challenge under Art.14, therefore, must fail."

d. A Division Bench judgment of the High Court of Bombay in the case of Anand Rathi Vs. SEBI reported in (2001) 32 SCL 227 (BOM.) in which the order was made by A.P.Shah, J., on behalf of the Division Bench and the relevant portions are as under:

"13. . . . It is only an interim measure to prevent further possible mischief of tampering with the security market. He submitted that SEBI has certainly a power to regulate the Stock Market and to intervene in volatile and serious situations where orders can always be passed as interim measures pending further investigation and enquiry. He submitted that Section 1 casts a duty on the SEBI Board to protect the interest of the investors in securities market by such measures as it thinks fit. Section 11B empowers the Board to issue necessary directions. While making a pointed reference to Section 11(1) and Section 11(2) (a), (e), (g) and (i), it was submitted that in due discharge of its function envisaged under the aforesaid clauses, directions have been issued to the petitioners not to undertake any fresh business as brokers till the inquiry proceedings are completed. In this connection, a reference was made to a Division Bench judgment of this Court in Ramrakh R. Bohra V. SEBI (1998) 18 SCL 543 wherein SEBI's power to ban trading as an interim measure pending enquiry was categorically upheld. Our attention was also drawn to the decision of the Division Bench of Gujarat High Court in SEBI v. Alka Synthetics Ltd. (1999) 95 Comp. Cas.772).

In the instant case, the impugned order has been passed not by way of punishment or penalty but only by way of an interim measure, pending enquiry into the manipulations. There is a well settled distinction in law between the suspensions which are made as holding operation pending enquiry and suspensions by way of punishment. As observed by Lord Denning in Lewis case (supra) (cited with approval by the Supreme Court in Liberty Oil Mills), there is a distinction between the suspensions which are inflicted by way of punishment, as for instance, when a member of the Bar is suspended for six months or when a solicitor is suspended from practice.

In Liberty Oil Mills case (supra), the Supreme Court observed:

"15. . . . We do not think that it is permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be pre-decisional; it may necessarily have to be post-decisional where the danger to be averted or the act to be prevented is imminent or whether the action to be taken can brook no delay. If an area is devastated by flood, one cannot wait to issue show cause notices for requisitioning vehicles to evacuate population. If there is an outbreak of an epidemic, we presume one does not have to issue show cause notices to requisition beds in hospitals, public or private. In such situations, it may be enough to issue post-decisional notices providing for an opportunity. It may not even be necessary in some situations to issue such notices, but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. It may and indeed it must vary from statute,

situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad interim orders may always be made ex parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request. There is no violation of a principle of natural justice if an ex parte ad interim order is made unless of course, the statute itself provides for a hearing before the order is made as in Clause 8-A. Natural justice will be violated if the authority refuses to consider the request of the aggrieved party for an opportunity to make his representation against the ex parte ad interim orders.

In *American Power & Light Company V. Securities & Exchange Commission* 329 US 90, 112, the U.S. Supreme Court held:

"20. Where Congress has entrusted an administrative agency with the responsibility of selecting the means of achieving the statutory policy, the relation of remedy to policy is peculiarly a matter of administrative competence.

21. The judgment of the Securities and Exchange Commission in dealing with the problem of adjusting holding company systems in accordance with the legislative standards prescribed by Section 11(b)(2) of the Public Utility Holding company Act of 1935, is entitled to the greatest weight; and only if the remedy chosen is unwarranted in law or

is without justification in fact should a Court attempt to intervene in the matter."

. . . The application of the principle of proportionality which is sought to be invoked by Dr. Singhvi is debatable qua its application to the executive actions *Tata Cellular v. Union of India* (1994) 6 SCC 651 and *State of A.P. v. McDowell & Co.* (1996) 3 SCC 709. In *G. Ganagutham's* case (supra), the Supreme Court held that where no fundamental freedoms are involved, the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on *Wednesbury* or *CCSU* principles as explained by Lord Greene and Lord Diplock respectively to find out if the executive or administrative authority has reasonably arrived at his decision as the primary authority. The question whether the Courts in our country will apply the principles of "proportionality" and assume a primary role was left open to be decided in a case where such action is alleged to offend fundamental freedoms under Articles 19, 21, etc. and not under Article 14.

In the light of the principles set out above, in our view, it is not possible to interfere with the interim orders passed by the SEBI. It cannot be said the SEBI's orders are absurd or based on no material.

In our view, the submission of Dr. Singhvi based on Article 19(1)(g) is equally untenable. The decision of Jammu and Kashmir High Court and Allahabad High Court have no application to the facts of the present case. What is laid down in these cases is that where the effect of a restrictive legislation is to totally prevent a citizen from carrying on trade, business or profession, such a restriction is unreasonable and void. In the instant case, the order impugned is of interim nature which is passed by SEBI in a pending enquiry. The question of any violation of Article 19(1)(g) does not arise."

e. Another Division Bench judgment of High Court of Bombay in the case of Ramrakh R. Bohra v. SEBI reported in SCL (18) 1998 543 and the relevant paras are as under:

"8. . . . The same is an interim arrangement so as to protect the interests of the investors and the securities market. The said directions have been issued after a preliminary inquiry has been conducted by recording statements of various witnesses, including those of the petitioners. One of the report in respect of the inquiry has been furnished to the Board and investigation into the other is in progress. As far as the inquiry report is concerned, the same cannot be disclosed to the petitioners as it would prejudice the further progress of investigation. Since the inquiry is incomplete, the contents of the inquiry cannot be disclosed as it would expose investigative content.

14. Whereas it is contended on behalf of the petitioner that the Chairman, under the aforesaid provision, will not be entitled to exercise all powers and do all acts and things which may be exercised or done by the Board as the same is excepted by the regulations by use of phrase "save as otherwise determined by regulations". As far as regulations are concerned, the same confer the power only on the Board and not on the Chairman. It is, however, the contention of the respondents that even though regulations may not have conferred the aforesaid powers on the Chairman, the aforesaid provision does confer the said powers on the Chairman. The phrase "save as otherwise determined by the regulations" covers only the phrase immediately following i.e. the Chairman shall also have powers of general superintendence and direction of the affairs of the Board. The same does not qualify what follows thereafter i.e. "and may also exercise all powers and do all acts and things which may be exercised or done by the Board". In our view, it is not necessary to dilate over this controversy as under Section 19, there is an independent power of delegation and the Board in the instant case, has delegated its powers on the Chairman. Section 19 provides, as under:-

"Delegation - The Board may, be general or special order in writing delegate to any member, Officer of the Board or any other person subject to

such conditions, if any, as may be specified in the order such of its powers and functions under this Act except the powers under Section 29, as it may deem necessary".

"15. In the instant case, the counsel for the respondents, has placed for our perusal, a resolution passed by the Board on 12.08.1997 which inter alia provides that the Chairman is authorized and shall be competent to take action for any default under the provisions of the SEBI Act, rules and Regulations. In view of the aforesaid delegation, we have no hesitation in holding that the Chairman of the first respondent is fully justified in taking the impugned action.

24. If one has regard to the aforesaid principles, it would follow that the power which has been conferred by Section 11B to issue direction are of a widest possible amplitude and are exercisable in the interests of investors and in order to prevent inter alia a broker from conducting his business in a manner detrimental to the interests of the investors or the securities market. The said power to issue directions under Section 11B must carry with it, by necessary implication, all powers and duties incidental and necessary to make the exercise of these powers fully effective including the power to pass interim orders in aid of the final orders. The provision of Section 11B, it is to be noted, has been introduced by an amendment brought about in 1995 and the same seeks to confer additional power on the Board, by way of interim measures, pending inquiry. The same is intended for the protection of the interests of the investors and the securities markets."

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30. From a plain reading of the impugned order it is seen that there were two inspections conducted by SEBI, the first one during August 27-30, 2003 and the second one during July 19-21, 2004 and the final inspection report comprising 20 observations/suggestions allegedly not complied with by CSX was forwarded to CSX vide letter dated 11.08.2004 advising it to furnish the compliance status and comments. Out of 20 observations/suggestions, 4 were not implemented and 10 observations/suggestions were at various stages of implementation. On the basis of the findings of the inspection revealing certain deficiencies and irregularities in the functioning of CSX, the respondent has granted conditional

renewal of recognition for a period of one year commencing from 18.09.2003 and ending on 17.04.2004. The conditions stipulated in the order of renewal of recognition are as follows:

- a. The Exchange shall commence trading only after obtaining final approval from SEBI for establishment of the Settlement Guarantee Fund / Trade Guarantee Fund.
- b. The Exchange shall ensure that every member of the Exchange maintains adequate Base Minimum Capital (BMC), which is free from any encumbrance before they are permitted for trade in the Exchange.
- c. The Exchange shall comply with the suggestions stated in the Report of the Inspection of the Exchange conducted by the SEBI during the period August 27-30, 2003 and communicated to the Exchange vide letter no.SRO/SMD/CSX/EIF/2003/1015 dated September 12, 2003.

31. The major observations/suggestions which were not implemented by CSX are as under:

- a. A sum of Rs.6,77,976/- was still due from about 73 members towards arrears of Annual Subscription fees (Rs.3,61,000/-), Investor Protection Fund contribution (Rs.56,500/-), Service Charges arrears (Rs.1,25,000/-) and other charges.
- b. CSX continued to function on deficits consecutively for the third year. Various accounts/funds like Base Minimum Capital ("BMC"), Pay-out Guarantee Fund, Investor Protection Fund, Investor Service Fund, etc. showed huge positive balances in the books of the Exchange, whereas the actual balances were Nil.
- c. Seven members continued to have shortfall in the BMC, out of which four members had Nil BMC.
- d. CSX was yet to complete the registration formalities of the Trust for the management and administration of the Investor Protection Fund (IPF) and therefore was yet to obtain exemptions from Income Tax.

32. In spite of the aforesaid deficiencies and failure of CSX to comply with the renewal of conditions as above, the recognition of CSX was renewed by SEBI from time to time subject to certain conditions, in the interest of the investing public of the region at large. The recognition of CSX was last renewed for a period of one year ending on 17.09.2006, subject to the conditions (a) and (b) stated supra. The renewal was also subject to the Exchange complying with the suggestions stated in

the Report of the Inspection of the Exchange conducted by the SEBI during the period July 19-21, 2004 and communicated to the Exchange on 11.08.2004. Due to non-compliance of the observations/suggestions stated in the Inspection Report, SEBI found that there was serious financial implication, non-fulfilment of basic membership requirement, etc. which were detrimental to the smooth functioning of the Exchange.

33. Apart from the above, non-compliance by CSX also includes (a) non-submission of the revised Corporatisation and Demutualisation Scheme, (b) Depletion in the contribution for Infrastructure Development Fund, (c) non submission of the report on allegations pertaining to sale of Land & Building, in spite of undertaking given to SEBI and (d) deadlock between Public Representative Directors/SEBI Nominee Director and the Elected Directors of the Exchange on the aforesaid issues which includes removal of Executive Director of the Exchange, etc.

34. On the basis of the aforesaid findings, a detailed show cause notice dated 22.11.2005 under Section 11 of SCRA was issued to the Council of Management of CSX calling upon it to show cause as to why appropriate directions including supersession of the Council of Management should not be passed in order to regulate the functioning of the Exchange and orderly development of the securities market. In response to the this show cause notice, CSX has submitted a detailed reply dated 06.12.2005 denying the allegations of irregularities/lapses in the functioning of the Exchange as alleged in the show cause notice and requested for personal hearing. Accordingly, a personal hearing was given to the Council on 09.03.2006 before the whole time member in which three Public Representative Directors, one SEBI Nominee Director and five Elected Directors appeared and made submissions on behalf of the Council of Management of CSX.

35. Pending consideration of the above show cause notice dated 22.11.2005, CSX in its letters dated 04.01.2006 and 24.01.2006 informed SEBI that 19 of its members have submitted a requisition under Section 169 of the Companies Act before its Council of Management to call for an EGM of the Exchange to pass a resolution of voluntary surrender of its recognition. Subsequently, SEBI received a letter dated 15.02.2006 from CSX informing that the members present in the EGM of the Exchange on the said date have unanimously passed a resolution for voluntary surrender of its recognition and also to the effect that the Exchange shall cease to function with immediate effect as a recognized Stock Exchange within the scope and meaning of the SCRA and SEBI Act. It was also mentioned therein that a Committee of elected Directors of the Exchange was formed empowering it to take necessary steps for changing the name of the Company, re-writing the Memorandum and Articles of Association, etc. and to exercise all such powers, which would

otherwise have been exercised by the Council to give effect to the aforesaid resolutions.

36. It was also brought to the notice of the respondent that the Council of Management of CSX, in its meeting held on 07.03.2006 which was attended by the elected member directors only, inter alia, considered the draft Memorandum and Articles of Association, the proposed change in the name of the Company and the draft notice for the EGM scheduled for 31.03.2006. The respondent, after examining the issue, issued a letter dated 13.03.2006 to CSX informing that the SCRA provides for the scheme of grant of recognition and withdrawal of recognition and under the statutory mechanism provided in the SCRA, voluntary surrender of recognition as resolved in the above-mentioned resolution is not provided and not permissible. A recognized Stock Exchange can cease to function as such if the recognition granted to such Stock Exchange is withdrawn in accordance with the SCRA and therefore, it cannot cease to function as a recognized Stock Exchange pursuant to any resolution passed by its members in this regard. The status of CSX is exclusively governed by the provisions of the SCRA and therefore, the resolution passed in the EGM held on 15.02.2006 appears to be ultra vires the SCRA. In view of the above, CSX was advised that the resolutions passed in the EGM held on 15.02.2006 cannot be acted upon by it.

37. It is also seen from the impugned order that SEBI was informed by the Registrar of Companies, Coimbatore who is also the SEBI Nominee Director on the Council of Management of CSX vide his letter dated 29.03.2006 that the members of CSX have resolved to re-write the Memorandum and Articles of Association of the Exchange and to change the name of the Company and have also filed Form No.23 with ROC on 16.03.2006 despite SEBI's advice. SEBI also came to know that it was decided to read out the contents of SEBI's letter in the EGM scheduled for 31.03.2006. However, CSX did not furnish the minutes of the said meeting either to SEBI or to the Public Representative Directors/SEBI Nominee Director. In spite of the said letter being read over at the EGM, the members attending the EGM passed the resolution adopting the new set of Memorandum and Articles of Association, ignoring SEBI's advice. It also came to the knowledge of SEBI that the Member-Directors of the Exchange have changed the method of operation of bank accounts in such a manner that all the cheques for the Exchanges would be signed by the elected Directors only and they have also removed the Consultant of the Exchange who was appointed by the Management Sub-Committee duly approved by the Council of Management and have appointed an internal auditor in his place without the notice of the Public Representative Directors/SEBI Nominee Director.

38. Further, SEBI has received a copy of letter dated 08.04.2006 of CSX addressed to the 6 Public Representative Directors/SEBI Nominee Director informing that at the EGM of the Exchange held on 31.03.2006, the members have unanimously passed a resolution adopting new Articles of Association according to which no person other than a member of the Exchange can hold the position of a Director. Consequently, the Public Representative Directors and the SEBI Nominee Director do not find place in the said Articles of Association. The invitation to them to attend the Board Meeting of CSX scheduled for 10.04.2006 was withdrawn. Knowing fully well that SCRA does not permit any voluntary surrender of recognition by any recognized Stock Exchange, CSX went ahead with the subsequent plan of action on the self-serving assumption that the surrender of recognition by them is legitimate and would, in turn, legitimize the slew of actions pursuant to the same. However, in law, all these actions are tainted with inasmuch as the very act of voluntary surrender lacks legal basis and any action based on the same would be legally vitiated in law.

39. The impugned order further states that the conduct of the elected Broker-Directors is subversive of regulatory discipline and SEBI is charged with the duty of securing proper management of the Stock Exchange and to prevent the affairs of such Exchange from being conducted in a manner detrimental to the interest of the investors in the securities market and it is bad that CSX has adopted a course of extreme defiance and confrontation, despite being reminded that its actions are illegal and ultra vires of SCRA. By disallowing the Public representative Directors/SEBI Nominee Director from attending the Board Meetings of CSX, the elected Broker-Directors have attempted to seize full control of the administration and control over the movable and immovable properties of the Exchange with a view to frustrate the on-going proceedings.

40. As a stock Exchange is a "State" within the meaning of Article 12 of the Constitution of India, SCRA was enacted to prevent undesirable transactions in securities by regulating business or dealings therein and the Stock Exchanges are credible building blocks of the economy and fulfill a vital function in the economic development of the nation. The proper working of a Stock Exchange essentially depends not only on the calibre of the members constituting it but also perhaps, more importantly on their standing. In carrying out the activities in a Stock Exchange, there must be public-spirited men of prudence with equipoise, perspicacity and maturity and the persons so appointed should have necessary professional competence and experience in the areas related to securities market. They are included in the Governing Boards of Stock Exchanges along with the elected broker members in a synergy of sorts, to broad base the Governing Boards and to make them fully representative of various interests in the

securities markets and in order to ensure that the affairs of the Stock Exchanges are conducted on healthy lines with the highest standards of professional conduct, good governance and transparency to inspire and sustain the confidence of the investing public.

41. In order to protect the interest of the investors and the integrity of the markets as a Regulator, SEBI, therefore, has to make the market place efficient and clean, wherein all the participants play their role diligently and professionally within the four corners of the system, without there being any scope for abuse. Where there is an apprehension that certain scrupulous elements are trying to subvert the system to serve their own interest, it becomes imperative on the part of SEBI to intervene and to curb further mischief and to take necessary action to instill and maintain public confidence in the integrity of the securities market. Also, SEBI has to prevent any loss or damage not only to the property of the Stock Exchange, which is a public institution, but also to protect the interest of investors and the integrity of the market.

42. Having highest regard to the duty cast upon it in the context of the unedifying developments that have taken place in CSX, after finding that there are substantial reasons to safeguard the interest of the CSX, SEBI was of the considered view that the conduct of the elected Member-Directors of CSX is highly unbecoming, contumacious and self-serving, besides constituting an obdurate defiance of not only the Regulator but also of the statutory requirements. In addition, the conduct reeks of a pre-meditation to seize control over the exchange and its assets in a planned manner and such deliberateness demonstrates a sordid intention to dismantle the Exchange, which is a public institution in exchange for a private arrangement to serve collateral purposes which are not in public interest.

43. Considering the sensitivity of the securities market and the possible impact of such pernicious activities of the Member-Directors of CSX on the investors in general and the securities market in particular, it becomes imperative to take immediate action, pending the proceedings pursuant to the show cause notice dated 22.11.2005 to ensure that the assets and properties of the Exchange are not brazenly usurped by a few, in a manner as would constitute a threat to the regulatory discipline and the integrity of the securities market.

44. The impugned order further highlights that unless a stringent preventive and remedial measure is taken immediately, there will be a grave jeopardy to the very functioning and management of the Exchange including control of its assets, which have been sedulously nurtured over a long period of time in the interest of the investing public and orderly development of the market and such an eventuality is fraught with the grave risk of

the control being taken over by a few for their own benefit to the detriment of the larger public cause. SEBI, in exercise of its powers under Section 12A of the SCRA, has issued directions as indicated supra which are impugned in the present writ petition.

45. On a careful analysis of the substantial grounds and the cogent reasons given by the respondent and on giving due consideration to the inspection report and the various provisions of law, the first question which arises for consideration is whether a writ petition is maintainable against a show cause notice.

46. It is argued by Mr. Datar that the impugned order, though claimed to be a show cause notice, is not a show cause notice, for the reasons that it is expressly termed as an order and it has specifically issued orders which are impermissible under the provisions of Section 12A of SCRA. That apart, directions under clause (c) of the impugned order can be issued only in the interest of investor and securities market and in the absence of any trading activities, there cannot be either the investor or a security market. The power, though sought to be having exercised under Section 12A of the SCRA, is essentially the one that has been taken under Section 11 which alone provides for supersession and the order in letter and in effect, is one superseding the governing body of CSX since a three member management committee has been appointed to carry on its day-to-day affairs and such supersession can be done only by the Central Government and no proof of delegation of this power to a member of the respondent has been furnished by the respondent. When section 11 provides for a hearing to be given and that an order of supersession being passed only after mandatorily giving a hearing, an order cannot be issued without the mandatory compliance and thus, it is a clear case of abuse and a colourable exercise of power. As such, the respondent cannot claim that it is a show cause notice when the impugned order clearly starts with the caption "Order" and in fact, there are orders that have been passed.

47. Resisting the same, the learned ASG has strongly relied on the principles laid down in the judgment in the cases of Special Director & Another Vs. Mohd. Ghulam Ghouse & Another reported in (2004) 3 SCC 440 and Standard Chartered Bank & Others Vs. Directorate of Enforcement & Others reported in (2006) 4 SCC 278 already referred to above. In the ruling of the latter case, the Apex Court has held that when a show cause notice is issued under statutory provision calling upon the person concerned to show cause, ordinarily that person must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. In the instant case, it cannot be said that

the notice has been issued palpably without the authority of law. Applying the principle laid down in the said judgment, there is no total lack of jurisdiction in the issuance of the said show cause notice and even the facts canvassed one way or the other would only relate to the limits on the exercise of power which will not warrant any interference at the threshold. Therefore, in the given circumstances and in view of the power exercised by the respondent and on verification of the materials and records placed before this Court, the petitioner, instead of agitating the issues which are canvassed before this Court before SEBI, has approached this Court and filed the writ petition on hand invoking jurisdiction under Article 226 of the Constitution, which in my opinion is premature and cannot be sustained. Even assuming that the writ petition can be sustained, there are also other points which emerge for consideration and they are dealt with in the subsequent paragraphs.

48. The second issue for consideration is whether SEBI is empowered to pass interim orders and that too, through its whole time member, pending adjudication of the show cause notice.

49. When once a Company had been licensed to become Stock Exchange, after bringing forth the relevant amendments to the Articles of such Company to enable them to become a Stock Exchange, then such amendments to become a Stock Exchange cannot be reversed unilaterally by the said Stock Exchange. Any amendment to the Articles of the Stock Exchange could be made only with the approval of the Central Government/SEBI as per Section 4(5) read with Section 2(g) of the SCRA. In the case on hand, CSX has removed the SEBI Nominee Director by amending the Memorandum and Articles of Association and again, the Articles have been amended enabling them to carry on the business of real estate and also for surrendering their licence to run a Stock Exchange. All these acts have been done by CSX to wriggle out of the statutory obligations under the SCRA and SEBI Act. When CSX is regarded as a State within the meaning of Article 12 of the Constitution and once it had become a Stock Exchange under the control of the respondent, it could be superseded by an order made under SCRA by the SEBI under the powers delegated to it and there is no question of a Stock Exchange ceasing to do its business as such by unilateral withdrawal of their licence.

50. Contrary to the provisions, CSX has acted and passed resolutions militating against the object and purpose of the two enactments namely, SCRA and SEBI Act. In such circumstances, the interim directions made in the impugned order by SEBI for the purpose of preserving the integrity of CSX cannot be taken exception to. Further, the power to make such interim direction pending disposal of the show cause notice has been upheld by two decisions of the Bombay High Court in the cases of Ramrakh Bohra and Anand Rathi already dealt with. On the question whether supersession could be made on the guise of an interim direction,

it is not the case that somebody else has been appointed in supersession of the Council of Management. In other words, no stranger has been appointed to look after the day-to-day business of CSX but only three of the nominated Directors who had been illegally removed by the petition but in law continued as such Directors have been placed in charge of the CSX, pending adjudication of the show cause notice. If exclusion of certain Directors from the management of the society could be called supersession, then, it is only CSX which had superseded the Stock Exchange by unilaterally removing the nominated Directors. Therefore, there is no substance in the contention that supersession had been made by a nominated member of SEBI without hearing CSX.

51. On the principle of delegatus non-potest delegare, delegation and further delegation are only matters of interpretation of the relevant provisions. In order to answer the issue whether such delegation has been authorized, one has to necessarily look into the relevant statutory provisions under Section 11 of the SCRA. The power to supersede has been vested with the Central Government and such power to supersede could be validly delegated by the Central Government to the SEBI under Section 29A of SCRA. Under Section 11(1), there is a generality of the functions and duties cast upon the SEBI i.e. to protect the interest of investors in securities and to promote the development of and to regulate the securities market, by such measures as it thinks fit. Under sub-section 2 of Section 11, without prejudice to such generality of power, by Section 11(2) (j), the powers delegated to SEBI under SCRA by the Central Government also becomes part and parcel of the duties and functions of the SEBI. The power under Section 11 and Section 29A of SCRA have been incorporated by reference and to this extent, they become part of SEBI and when once such a delegation had taken place, it becomes a statutory function and duty of the SEBI under Section 11(2)(i) which could be validly delegated under the provisions of SEBI itself under Section 19 to the Chairman or any of its officers. In this case, a whole time member of the SEBI has passed the order.

52. In view of the ruling of the Supreme Court in the case reported in AIR 1967 SC 295 (supra), when the provisions of the statutory enactment did not provide for a further delegation, the same could not be done by way of statutory rules. But, in the case before me, the functions of the Central Government under SCRA by delegation became the function of the Board under Section 11(2)(i) and when once it became the function of the Board, the statute itself authorizes the delegation of such function of the Board under Section 19 to the Chairman or its officers. Section 11(2)(a) of SEBI Act empowers SEBI to regulate the business of the Stock Exchanges and any other securities market and this specific power vested with SEBI enables it to pass appropriate directions to the Stock Exchanges. Exercise of such power by

SEBI is further complimented by the provisions of SCRA. In view of such powers available under the SEBI Act, the impugned show cause notice has been passed by a whole time member on behalf of the Board and therefore, SEBI has got the necessary power under the SEBI Act to pass interim order pending adjudication of the show cause notice and the impugned order signed by a whole time member can be sustained.

53. The third point arising for consideration is whether any emergent situation has arisen necessitating the issue of the impugned order. It was argued by Mr. Datar that CSX had become defunct and not doing any business for several years. But, on the contrary, the letter dated 21.04.2006 of CSX clearly evidences that CSX is still carrying on the business of a Stock Exchange. It was only to forestall any order of supersession which might be passed against CSX that CSX had chosen to pass such resolutions in the EGM and has filed the present writ petition to avoid further action pursuant to the impugned show cause notice. Therefore, there is no bona fide in filing this writ petition.

54. It was further argued by Mr. Datar that the impugned order is a classical verbosity without any substance. It was pointed out that till the change in the Memorandum consequent to the EGM resolutions, when the petitioner ceased to operate as a Stock Exchange, the petitioner was being managed by its governing body which consisted of public representatives and SEBI nominees. Therefore, the ground for emergent situation could only have been after the said period and no grounds have been set forth in the order. According to him, the petitioner's only assets are its infrastructure or building and therefore, it is but natural that its object would include a real estate business and merely because an object is to carry real estate business, grave and serious allegations of stripping of assets cannot be made and it is a mere ipsi dixit of the respondent and it is the petitioner which is safeguarding the assets and in fact, one of the nominees of the respondent who was the Registrar of Companies who is trying to strip the assets of the petitioner by trying to force it to sell its property which has been resisted and prevented by the petitioner's office bearers.

55. It is seen that two inspections were carried out by SEBI and a show cause notice was also issued to CSX to comply with certain observations/suggestions in order to protect the investing public at large. Also, a personal hearing was given to the Council of Management on 09.03.2006 before passing the impugned order wherein 3 Public Representative Directors, one SEBI Nominee Director and 5 Elected Members appeared and made submissions on behalf of Council of Management of CSX. CSX has also informed SEBI that 19 of its members have submitted a requisition under Section 169 of the Companies Act before the Council of Management to call for an EGM of the Exchange to pass

the resolution of voluntary surrender of recognition. There were attempts to change the name of the Company, re-writing the Memorandum and Articles of Association of CSX and exercise of such powers which would otherwise have been exercised by CSX to give effect to the aforesaid resolutions of surrender of recognition, etc. CSX has also changed the method of operation of bank accounts and removed the Consultant of the Exchange who was duly appointed by the Council of Management and has appointed an internal auditor in that place without any notice to the Public Representative Directors/SEBI Nominee Director. Thus, all these actions of CSX have given rise to an emergent scenario to SEBI to take some interim measures in order to protect the interest of the larger investing public as Stock Exchanges are creditable building blocks of the country's economy. Thus, I am of the view that on the basis of well settled principles and with available sources of power within its competence, SEBI has issued the interim directions and the same cannot be found fault with as there was certainly an emergent situation warranting issue of interim directions.

56. The fourth and last point for consideration in this petition is whether voluntary surrender of recognition by CSX is permissible. In the absence of any provision under the SCRA, voluntary surrender of recognition as resolved by CSX in its EGM is contrary to law as it is clear that CSX has resorted to this action only in order to wriggle out itself of the statutory obligations under SCRA and SEBI Act for compliance of certain observations and to answer the various issues raised by SEBI for the proper management and control of CSX involving great extent of public interest.

57. As is known, the National Stock Exchange, Bombay Stock Exchange and RSEs in India play the role of a barometer in the development of Indian economy and in such view of the matter, any action which is detrimental to the interest of the investing public at large and contrary to the provisions of the SCRA and SEBI Act, will certainly have a negative impact on the economic system of the country as a whole.

58. In view of the above discussion and various rulings of the Supreme Court and Bombay High Court, more particularly in the light of the decision in Anand Rathi's case, it is not possible to interfere with the impugned order passed by SEBI since an emergent situation has arisen warranting SEBI to pass such an impugned order through its whole time member to safeguard the securities market and the investing public and to ensure orderly development of securities market in the process of development of national economy.

59. In that view of the matter, I find no infirmity with the impugned order no.WTM/GA.MRD/DSA/58/06 dated 17.04.2006 passed by SEBI giving directions to the effect that (i) CSX is restrained from transferring or alienating any movable or immovable property of the Exchange in any manner, (ii) the day-to-day functioning of CSX would be undertaken by a three member Committee consisting of Shri.V.Selvaraj, SEBI Nominee Director/ROC, Shri. C.A. Venkatesan and Shri. K.R. Raman, Public Representative Directors and (iii) the said Committee is authorized to make such expenditures and operate the bank accounts of CSX and as such, the same is upheld and the writ petition, which is devoid of merits, is liable to be dismissed and is accordingly dismissed without any order as to costs. Consequently connected W.P.M.P.s and W.V.M.P. are also dismissed. cad

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman
Securities & Exchange Board of India
Mittal Court "B" Wing, I Floor
224, Nariman Point
Mumbai - 400 021

2. The Three Members Committee consisting of
Shri. V. Selvaraj,
SEBI Nominee Director/ROC,
Shri C.A. Venkatesan and Shri K.R. Raman Public Representative
Directors
No. 683-686 Trichy Road,
Coimbatore 641 005.

3. The Director, Registrar of Company,
Coimbatore.

+ one cc to Mr. Sathish Parasaraman, Advocate sr no. 38573
+ one cc to M/s. Shivakumar and Suresh Advocates sr no. 38560'

PV(CO)
NM(28.08.2006)

W.P. No.11557 of 2006